IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

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MFA.No. 1176 of 1998()
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AGAINST THE JUDGEMENT IN C.C.NO.489/96 IN CP.3/1992 Dated 21/05/1998
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APPELLANT/3RD RESPONDENT:
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KOCHUPOLY, S/O.KUTTICHAKKU AUGUSTHI, CHALAKUDI P.O., THRISSUR DISTRICT.

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENTS/CLAIMANT & RESPONDENTS 1 AND 2:
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1. M/S.HOLY FAMILY CHITS AND LOANS PVT.LTD.(IN LIQN.), REPRESENTED BY THE oFFICIAL LIQUIDATOR, HIGH COURT OF KERALA, ERNAKULAM.

2. JENNY ANTO, W/O.ANTO, THEKKANATH HOUSE, CHALAKUDY.P.O., THRISSUR DISTRICT.

3. T.A.ANTO, S/O.THEKKANATH ANTONY, CHALAKUDY P.O., THRISSUR DISTRICT.

BY ADV. SRI.K.MONI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/03/2007, ALONG WITH MFA NO.1351 OF 1999 COURT ON DELIVERED THE FOLLOWING:

**P.R.Raman**
**&**
**Antony Dominic, JJ.**
**==========**
**M.F.A.Nos.1176/98 & 1351/99**
**==========**

**Dated this the day of June, 2007.**

**JUDGMENT**

**Antony Dominic,J.**

Common question arises in these two appeals and therefore we dispose of both the appeals by this judgment. M.F.A.No.1176 of 1998 and M.F.A.No.1351 of 1999 arise out of the judgments and decrees in C.C.Nos.489 of 1996 and 380 of 1996 respectively, both filed by the first respondent in these two appeals. By judgments and decrees dated 21st May, 1998 and 1st June, 1999 while C.C.No.489 of 1996 was decreed in part, C.C.No.380 of 1996 was decreed in full. It is aggrieved by these two judgments and decrees that the appellants have come up in appeals.

2. In so far as C.C.No.489 of 1996, the facts are that the first respondent claimed Rs.11,800/-, towards the balance kuri instalment

with interest at 12% from 31.3.1986 to 30.6.1996 to the tune of Rs.14,514/-. It was alleged that the subscriber had paid upto 52nd instalment and defaulted payments from 53rd instalment, which fell due on 5.2.1986, in relation to a kuri which commenced on 5.10.1981 and terminated on 5.12.1990. In the company claim filed by the Official Liquidator on 6.11.1990, rejecting the plea that the entire claim was time barred, the learned Company Judge held that the claimant is entitled to recover from the 90th instalment that fell due on 16.3.1989 on the ground that since winding up proceedings commenced on 9.3.1992 claimant's entitlement to recover is only the dues for the immediate proceeding 3 years. Accordingly, a decree for Rs.4,200/- with interest thereon at 12% from 5.4.1989 onwards was passed in favour of the claimant.

3. In so far as the facts in the case of C.C.No.380 of 1996 is concerned, the kuri in question commenced on 4.12.1981 and was prized on the same date. Accordingly, the kuri amount was received by the subscriber on 9.2.1982, executing a kuri agreement in favour of the foreman of the Company. Future subscriptions upto 51st instalment fell due on 5.5.1986 were paid and default was committed in respect of 52nd instalment that fell due on 4.2.1991 onwards. The kuri terminated on 16.12.1990 and the claim was filed by the Official

Liquidator on 9.9.1996. Overruling the objection on the ground that the claim was time barred in view of the provisions contained in the Limitation Act, 1963, the learned Company Judge held that the foreman is entitled to wait until the termination of the kuri to seek recovery of the balance amount due and that as on the date of commencement of the winding up, the debt was not time barred,and that the plea of limitation raised was not sustainable. Accordingly, the claim was decreed by the learned Company Judge subject to set off Rs.3,763/-. It is aggrieved by the judgments and decrees thus passed by the learned Company Judge that these appeals are filed.

4. The only contention urged by the learned counsel for the appellants is that in view of the provisions contained in Article 137 of the Limitation Act, 1963 the debts in question were time barred. While resisting the plea raised by the appellants, counsel for the Official Liquidator relied on the provisions contained in Section 446(2) and 458A of the Companies Act.

5. Section 446(2)(b) of the Companies Act provides that the Company Court has jurisdiction to entertain or dispose of any claim made by or against the company in liquidation. Section 458A of the Companies Act provides for exclusion of certain time in computing period of limitation and is extracted below for reference:

> "458A. Exclusion of certain time in computing periods of limitation:- Notwithstanding anything in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded."

The scope of Section 458A of the Companies Act has been discussed in great detail by the learned Company Judge in the judgment in C.C.No.489 of 1996 and the relevant paragraph is extracted below for reference.

> "28. What emerges from the foregoing discussions are: (1) Under Section 446(2) of the Companies Act the Official Liquidator can enforce only the claims which were not barred by time at the time of commencement of the winding up proceedings. (2) Article 137 of the Limitation Act applies to the claims preferred by the Official Liquidator under Section 446(2)(b) of the Companies Act. (3) The right of the Official Liquidator to prefer claim under Section 446(2)(b) of the Act arises only on the passing of the winding up order or on the appointment of a Provisional Liquidator and therefore, the starting point of limitation for

preferring claims under Section 446(2)(b) of the Act is the date on which the winding up order is passed or a Provisional Liquidator is appointed. (4) The Official Liquidator is entitled to a period of three years from the date of winding up order or the date of appointment of Provisional Liquidator as well as the duration of the pendency of winding up proceedings and one year immediately following the winding up order as provided under Section 458-A(1) and (2) for preferring claim under Section 446(2) (b) of the Companies Act. (5) Even if there is a stipulation in the kuri security bond or agreement that in case of default of payment of one or more instalments on the respective due dates the foreman is entitled to recover the entire subsequent instalments in a lump, unless and until the kuri Company under liquidation had exercised its option as provided under Section 32(1) of the Travancore Chitties Act or under Section 33(1) of the Chit Funds Act, 1982 as the case may be, the Official Liquidator is entitled to recover the instalments which fell due within three years prior to the institution of the winding up proceedings and not barred by time under Article 137 of the Limitation Act, even if the claim is preferred in respect of the entire balance amount due from the subscriber from the date of default including the instalments which were barred and not barred on the date of commencement of the winding up proceedings. Bearing these principles in mind the contention put forward by both sides should be considered in each of the individual cases involved herein."

6. In principle, we are in full agreement with the interpretation given by the learned Company Judge to the scope and purport of Section 458A of the Companies Act. However, the question that remains to be considered is whether even after giving the benefit of extended period of limitation to the Official Liquidator, the Company claim was still time barred. In these cases, as per Section 441 of the Companies Act, 1956, winding up proceedings commenced, with the presentation of the Company Petition on 9.3.1992, and the Company was ordered to be wound up by order dated 15.7.1992. As held by the Delhi High Court in ***Liberty Finance P. Ltd. In re Official Liquidator*** v. ***Pandit Radha Mohan and others*** (1979) 49 Company Cases 287, the right of the Official Liquidator to make an application under Section 446 arises on the date when the winding up order is passed and reading Section 458A of the Act and Article 137 of the Limitation Act together, such an application by the Official Liquidator should be filed within a period of four years from the date of the winding up order. The above judgment of the Delhi High Court has been followed with approval by a Full Bench of this Court in ***Ulahannan*** v. ***Wandoor Jupiter Chits (P) Ltd.*** - 1988(2) K.L.T. 636. Thus, after excluding the period from the date of commencement

of winding up to the date on which order of winding up was made, ie, period between 9.3.1992 and 15.7.1992, counting 3 years thereafter in terms of Article 137 of the Limitation Act and an additional one year in terms of Section 458A of the Companies Act, the four years period from 15.7.1992 expired on 14.7.1996. Thus, claims which are not barred as on the date of commencement of the winding proceedings could be recovered by the Official Liquidator by filing claims under Section 446(2)(b) of the Companies Act provided the claims were filed on or before 14.7.1996. Admittedly, the claim in C.C.No.489 of 1996, which is the subject matter of M.F.A.No.1176 of 1998 was filed only on 6.11.1996 and the claim which is the subject matter of C.C.No.380 of 1996, and M.F.A.No.1351 of 1999, was filed on 9.9.1996. Obviously, both these claims were filed beyond the period prescribed in terms of Section 458A of the Companies Act and Article 137 of the Limitation Act, 1963 and therefore, were time barred.

7. Although several other legal contentions were raised before us, we see no necessity to consider the same, since these appeals are liable to be allowed in view of our reasoning as contained herein above.

8. In the result, the judgments and decrees in C.C.No.489 and 380 of 1996 are set aside and the appeals are allowed. Consequently,

the C.C.Nos. 380 of 1996 and 489 of 1996 filed by the Official Liquidator will stand dismissed, without any order as to costs.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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